

**FILED**

AUG 7 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983**Name WHITEN Timothy A  
(Last) (First) (Initial)Prisoner Number 290 REGISTERInstitutional Address police Richmond CA. DEPTMailing address:  
P.O. Box 3214  
SAN RAFAEL, CA.UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIATimothy Allen Whiten  
(Enter the full name of plaintiff in this action.)

vs.

W.T. PRESSLEY, is sued  
Individual and in his official  
capacity, as safety officer  
for Dept. of motor vehicles  
(Enter the full name of the defendant(s) in this action)Case No. 08 3788

(To be provided by the Clerk of Court)

COMPLAINT UNDER THE  
CIVIL RIGHTS ACT,  
Title 42 U.S.C § 1983 (PR)

E-filing

*[All questions on this complaint form must be answered in order for your action to proceed..]*

## I. Exhaustion of Administrative Remedies.

**[Note:** You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]A. Place of present confinement 290 REGISTER

B. Is there a grievance procedure in this institution?

YES ( ) NO ☒

C. Did you present the facts in your complaint for review through the grievance procedure?

YES ☒ NO ☒

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

COMPLAINT

- 1 -

08-3788 JSW

1 1. Informal appeal \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

4 2. First formal level \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_

7 3. Second formal level \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_

10 4. Third formal level \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_

13 E. Is the last level to which you appealed the highest level of appeal available to  
14 you?

15 YES ( ) NO ☒

16 F. If you did not present your claim for review through the grievance procedure,  
17 explain why. 290 REGISTER  
18 \_\_\_\_\_  
19 \_\_\_\_\_

20 II. Parties.

21 A. Write your name and your present address. Do the same for additional plaintiffs,  
22 if any.

23 TIMOTHY ALLEN WHITEN  
24 \_\_\_\_\_  
25 \_\_\_\_\_

26 B. Write the full name of each defendant, his or her official position, and his or her  
27 place of employment.

28 W. T. PRESSLEY

1 is SUED INDIVIDUAL AND IN HIS OF-  
 2 FICAL CAPACITY AS DRIVER SAFETY  
 3 OFFICER FOR THE DEPARTMENT OF MOTOR  
 4 VEHICLES, WHILE WORKING UNDER COLOR OF LAW

5 III. Statement of Claim.

6 State here as briefly as possible the facts of your case. Be sure to describe how each  
 7 defendant is involved and to include dates, when possible. Do not give any legal arguments or  
 8 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a  
 9 separate numbered paragraph.

10 CLAIM ONE\* GROSS NEGLIGENCE  
 11 CLAIM TWO\* DUE PROCESS OF THE 14TH AMENDMENT CONST.

12  
 13 THERE WAS A 30 DAY STAY AGAINST my DRIVING  
 14 PRIVILEGE AND I FIND THIS ACTION WAS ILLEGAL, AND  
 15 A VIOLATION OF MY CONSTITUTIONAL RIGHTS OF DUE  
 16 PROCESS OF THE 14TH AMENDMENT. EXHIBIT #A, ATTACHED  
 17 HEREIN SHOWS GROSS NEGLIGENCE. MY LIC. WAS TAKEN  
 18 BY W.T. PRESSLEY, DRIVER SAFETY OFFICER OF THE DEPT.  
 19 OF MOTOR VEHICLE. FOR A OUT OF STATE VIOLATION OC-  
 20 CURRING ON 4-18-2007, EXHIBIT #A, SHOWS THAT THE OUT  
 21 OF STATE VIOLATION CLEARLY OVER THE 12 MONTHS  
 22 STATED IN EXHIBIT #A

23 IV. Relief.

24 Your complaint cannot go forward unless you request specific relief. State briefly exactly  
 25 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

26 DUE TO THE GROSS NEGLIGENCE OF W. T.  
 27 PRESSLEY, PLAINTIFF SUFFERED MENTAL  
 28 ANGUISH, HE WAS UNABLE TO TAKE HIS

1 Kids To THERE doctor Appointments, and  
2 WAS UNABLE TO WORK. PLAINTIFF SEEK RELIEF  
3 IN THE AMOUNT OF TEN million dollar,  
4 for PUNITIVE AND COMESATORY damages

5 I declare under penalty of perjury that the foregoing is true and correct.

6  
7 Signed this 06 day of August, 2008

8  
9   
10 (Plaintiff's signature)

DEPARTMENT OF MOTOR VEHICLES  
 LICENSING OPERATIONS DIVISION  
 303 Hegenberger Road, Ste 400  
 Oakland, CA 94621

Telephone: (510) 563-8900 FAX: (510) 563-8950



## NEGLIGENT OPERATOR - POINT COUNT NOTIFICATION OF FINDINGS AND DECISION

DS289071008N7360487WHI071408  
 Timothy Allen Whiten  
 P. O. Box 3214  
 San Rafael, CA 94912

DRIVER LICENSE OR FILE NO.
N7360487
VEHICLE CODE AUTHORITY SECTIONS
12809 13359 14105 14250
EFFECTIVE DATE
July 14, 2008

The stay of the action against your driving privilege in this case has been ended. The probation and suspension of your driving privilege is effective July 14, 2008. The suspension will remain in effect through January 13, 2009 and the probation will continue through July 13, 2009.

Timothy Allen Whiten is hereinafter also known as "Respondent."

The following findings and determinations are the results of your Hearing on June 10, 2008.

### FINDINGS OF FACT

#### **Negligent Operator Points:**

Respondent's driving record has accrued a total of 4 negligent operator points within 12 months because of the following:

##### Point Count Violations -

- \* 10 {Fail to obey traffic control device - Out of State Violation} occurring on 04/18/2007 and carries a point count of 1.
- \* 21453 {Illegal movement/red light/arrow} occurring on 10/23/2007 and carries a point count of 1.
- \* 22101 {Turning and U-turns} occurring on 01/02/2008 and carries a point count of 1.
- \* 22450 {Stop required} occurring on 02/13/2008 and carries a point count of 1.

The evidentiary basis for the finding on the negligent operator issue is:

- ° DMV's Exhibit: DMV Driving Record Printout

#### II

#### **Amount of Use/Miles Traveled:**

Due consideration was given to Respondent's use of a vehicle and the miles he travels as follows: As based on respondent's testimony, respondent drives 600 miles per week to, from and during course of employment.

As a result of the preceding, the administrative action against Respondent's driving privilege is mitigated.

The following is the evidentiary basis for the Amount of Use/Miles Traveled findings:

- ° Respondent's testimony.

#### III

#### **Additional Findings:**

° Cause exist to re-impose the action against respondent's driving privilege pursuant to Section(s) 12089(e), 12813, 13359 and 14250 of the Vehicle Code in that respondent is a negligent operator of a motor vehicle within the meaning of Sections 12810 and 12810.5 of the Vehicle Code. Respondent appeared to have no insight into promoting safe driving habits. Respondent testified that these tickets belonged to his brother and that the tickets had been investigated via the fraud unit. Respondent was advised to provide such paperwork or name of investigator and or letters from a investigator



Timothy Allen Whiten DL/ID/X # N7360487

to substantiate his claim due by 07/01/08 - as of 08/10/08 these documents have not been received nor has respondent made any attempts to contact the department. Therefore, the department can only infer that respondent was not remembering objectively. Due consideration was given to respondent's record and testimony. Therefore, the suspension will be re-imposed. In part due to the flagrant pattern of negligence cannot be condoned nor overlooked and outweigh respondent's need for a license.

### **DETERMINATION OF ISSUES**

You are a negligent operator of a motor vehicle as defined in §12810.5 of the Vehicle Code in that you have accumulated 4 negligent operator points in 12 months.

### **DECISION**

As a result of the preceding Findings & Determination, it is hereby ordered that the administrative action taken against your driving privilege in this case be reimposed as specified here in these documents.

### **PROBATION TERMS**

You must obey the provisions of the California Vehicle Code, all traffic regulations in this and other states, and remain free from traffic accident responsibility for the term also specified here in these documents.

### **VIOLATION OF THESE TERMS WILL RESULT IN SUSPENSION OR REVOCATION OF YOUR DRIVING PRIVILEGE (SEE ATTACHED OR REVERSE)**

**Dated: July 10, 2008**

**W. T. Pressley - Driver Safety Officer**

**THIS ACTION IS INDEPENDENT OF ANY OTHER ACTION TAKEN BY THE COURT OR THIS DEPARTMENT**

**BEFORE A DRIVER LICENSE CAN BE ISSUED OR RETURNED TO YOU AFTER JANUARY 13, 2009, YOU MUST COMPLETE THE FOLLOWING:**

A \$55.00 (§§14904 and 14906 VC) reissue fee must be paid to DMV.

**NOTE: If you drive while your driving privilege is suspended or revoked, you may be arrested and, if convicted, jailed and/or fined.**

### **APPEAL RIGHTS**

You are entitled to a departmental review of this decision. A request for the departmental review shall stay the action pending a decision on review. The review shall be limited to an examination of these findings and determination, and any documentary evidence submitted at the hearing. It will not include a personal interview nor a review of evidence not presented at the hearing. To have this review, you must submit your written request to the address shown above within 15 days from the date shown below.

You may also request a court review of this action by contacting the superior court in your county of residence within 90 days from the date shown below.

### **CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of California, that on the date below, I deposited in the United States mail at the address shown above, a true copy of this document; that I am over the age of eighteen years; an employee of the Department of Motor Vehicles at the business address shown above in the county where the office is located; and that I am not a party to the cause herein mentioned.

DATE 07/10/08	SIGNATURE OF AUTHORIZED DMV EMPLOYEE W. T. PRESSLEY
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**California Relay Telephone Service for the deaf or hearing impaired from TDD Phones: 1-800-735-2929; From Voice Phones: 1-800-735-2922**

## IMPORTANT INFORMATION REGARDING PROBATION

You must obey the provisions of the California Vehicle Code, all traffic regulations in this and other states, and remain free from accident responsibility.

As provided in §14252 VC, any of the following violations of probation will result in a 6-month suspension and extend probation 1 year from violation or accident date:

- Any point count violation.
- Any failure to appear (FTA) in court on a traffic violation.
- Any violation occurring during any suspension.
- Any alcohol/drug related driving incident.
- Any involvement in a responsible traffic collision.

A third violation of probation will result in revocation. Any subsequent violation will result in an additional one year revocation.

You will be required to file proof of financial responsibility for three years as provided in §16430 VC following any suspension or revocation indicated above.

## PROOF FILING INFORMATION

The usual method of showing **proof** of financial responsibility is to provide a California Insurance Proof Certificate (form SR-22/SR-1P) from an insurance company authorized to do business in California. The **types** of coverage on the form SR-22/SR-1P are listed below:

**SR-22** ~ A motor vehicle liability policy may be provided to cover only vehicles registered in your name (owner's policy), only to vehicles you do not own (operator's policy), or all vehicles whether you own them or not (broad coverage). This certificate is acceptable for all DMV actions requiring proof of responsibility.

**SR-1P** ~ An automobile liability policy or a liability policy may be provided to cover vehicles with less than four wheels. This certificate is used after an accident without insurance, for negligent operator sanctions per §12810.5 VC, or for an application by a minor requiring proof.

**NOTE: THE SR-1P PORTION IS NOT ACCEPTABLE FOR ADMINISTRATIVE PER SE ACTIONS.**

To obtain a California Insurance Proof Certificate, contact an insurance agent or broker. **DO NOT SUBMIT** a copy of your policy or application as neither can be accepted in place of the California Insurance Proof Certificate. If necessary, persons unable to obtain this insurance coverage through their regular insurance company may have any insurance agent or broker make an application to the California Automobile Assigned Risk Plan. The Plan may be contacted directly for information at:

California Automobile Assigned Risk Plan  
P.O. Box 7917  
San Francisco, CA 94120-7917

Proof of financial responsibility may be met by a \$35,000 cash deposit or \$35,000 surety bond. Proof may also be filed by a self-insurer on behalf of an employee to permit driving vehicles owned by the self-insurer within the scope of employment. Bond information must be obtained from a surety bond company authorized in California. For information on the cash deposit or self-insurance, you may call (916) 657-6421, or write to:

DMV, Financial Responsibility Area  
P.O. Box 942884 Mail Station J-237  
Sacramento, CA 94284-0884